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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	)	
	)	
Leonard et al.	)	Examiner: Ford, V.
	)	
Serial No. 09/708,352	)	Art unit: 1645
	)	
Filed: November 8, 2000	)	
	)	
For: VACCINES FOR *MYCOPLASMA BOVIS* AND METHODS OF USE	)	

RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

NEEDLE & ROSENBERG, P.C.
Suite 1200, The Candler Building
127 Peachtree Street, N.E.
Atlanta, Georgia 30303-1811

September 24, 2001

Sir:

This is in response to the Office Action dated August 24, 2001, wherein restriction of the claims in the above-identified application is required. The Office Action requires restriction to one of the following groups of claims:

Group I, which the Examiner designates as claims 1-12, drawn to a vaccine;

Group II, which the Examiner designates as claims 13-17 and 20, drawn to a method of immunizing cattle; and

Group III, which the Examiner designates as claims 18-19, drawn to a method of producing a *M. bovis* vaccine.

Applicants provisionally elect Group I with traverse.

Applicants request that the restriction requirement be reconsidered because the Examiner has not shown that a serious burden would result if all of the claims are examined together. M.P.E.P. § 803 provides that "[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." (*Emphasis added.*) Thus, for a restriction requirement to be proper, the Examiner must satisfy the following two criteria: (1) the existence of independent and distinct inventions (35 U.S.C. § 121) and (2) the search and examination of the entire application cannot be made without serious burden. *See* M.P.E.P. § 803. The Examiner has not shown that the *second* requirement has been met. Specifically, the Examiner has not shown that it would be a serious burden to search and examine the claims in Groups I, II and III together, since a search directed to the claims of Group I will necessarily also include the art that is directed to the claims of Groups II and III. Specifically, Applicants submit that a complete search of the art relevant to any vaccine which is protective against *Mycoplasma bovis* clinical disease in bovine species comprising at least one inactivated or attenuated *M. bovis* biotype should identify art describing methods for immunizing cattle against clinical disease caused by *M. bovis* and art describing methods of producing a *M. bovis* vaccine. Accordingly, no additional search and examination over what is already required for Group I is required for examination of Groups I, II and III.

Because the Examiner has not shown that the search and examination of the entire application cannot be made without a serious burden, Applicants respectfully request that the restriction requirement be withdrawn and that all the claims be examined together.

No fee is believed to be due; however, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

NEEDLE & ROSENBERG, P.C.

Gwendolyn D. Spratt
Registration No. 36,016

Suite 1200, The Candler Building
127 Peachtree Street, N.E.
Atlanta, Georgia 30303-1811
(404) 688-0770

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on the date shown below.

Gwendolyn D. Spratt — Date: 9-24-01